

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,671

IN THE MATTER OF:

Served August 8, 2007

ZEE TRANSPORTATION SERVICE INC.,     )  
Suspension and Investigation of        )  
Revocation of Certificate No. 506     )

Case No. MP-2007-120

This matter is before the Commission on respondent's response to Order No. 10,654, served July 24, 2007.

**I. BACKGROUND**

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."<sup>1</sup> A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.<sup>2</sup>

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 506 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 506 was rendered invalid on June 11, 2007, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 10,544, served June 11, 2007, noted the automatic suspension of Certificate No. 506 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 506, and gave respondent thirty days to replace the expired endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 506.

Respondent paid the \$50 late fee on June 13, 2007, and submitted a \$1.5 million primary WMATC Insurance Endorsement on June 12, 2007. Although the effective date should have been June 11, 2007, the endorsement had an effective date of June 12, 2007, at respondent's request. Respondent has admitted operating on June 11 despite having failed to request coverage for that date.

Order No. 10,654 accordingly gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 506, for knowingly and willfully violating Article XI, Section 6(a), of the Compact by

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<sup>1</sup> Compact, tit. II, art. XI, § 6(a).

<sup>2</sup> Compact, tit. II, art. XI, § 7(g).

conducting operations under an invalid/suspended certificate of authority.<sup>3</sup>

## II. RESPONSE, ASSESSMENT OF FORFEITURE, AND ORDER OF PROBATION

Respondent submitted a revised replacement WMATC Insurance Endorsement on July 30, 2007. The revised replacement is effective June 11, 2007. This eliminates the 1-day break in coverage under the original replacement endorsement but does not alter the fact that respondent operated on June 11 while suspended.

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.<sup>4</sup> Each day of the violation constitutes a separate violation.<sup>5</sup>

"Knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>6</sup> "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.<sup>7</sup>

Respondent's president, Zainabu Kamara characterizes respondent's request for an effective date of June 12 as a "mistake", but employee negligence is no defense.<sup>8</sup> "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.<sup>9</sup>

In any event, it would have been a simple matter for respondent to check with the Commission prior to June 11 to verify that the insurance company had corrected respondent's mistake and filed a replacement endorsement effective June 11. We find that respondent

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<sup>3</sup> Respondent is well acquainted with the Commission's insurance requirements, having been suspended twice last year for failing to comply with Regulation No. 58. See *In re Zee Transp. Serv. Inc.*, No. MP-06-146, Order No. 9933 (Sept. 22, 2006); See *In re Zee Transp. Serv. Inc.*, No. MP-06-093, Order No. 9624 (June 12, 2006).

<sup>4</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>5</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>6</sup> *In re Annie Gardner, t/a Gardner Transportation*, No. MP-06-115, Order No. 10,456 (May 8, 2007); *In re Northstar Transp. LLC*, No. MP-06-122, Order No. 9901 (Sept. 11, 2006); *In re Wheelchair Mobile Transp., Inc.*, No. MP-05-186, Order No. 9899 (Sept. 11, 2006); *Amna O. Abugusseisa, t/a AB & B Trans*, No. MP-03-50, Order No. 7621 (Dec. 18, 2003).

<sup>7</sup> Order No. 10,456; Order No. 9901; Order No. 9899.

<sup>8</sup> Order No. 7621; *In re Paramed Medical Transportation, Inc.*, No. MP-02-50, Order No. 7012 (Jan. 24, 2003).

<sup>9</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

was careless in not checking with the Commission prior to June 11 to verify that the necessary filing had been made.<sup>10</sup>

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed carriers on probation for one year.<sup>11</sup> We shall follow the same course here and assess a civil forfeiture of \$250 per day for one day.

Once respondent has paid the forfeiture, the suspension shall be lifted and the period of probation shall commence.

THEREFORE, IT IS ORDERED:

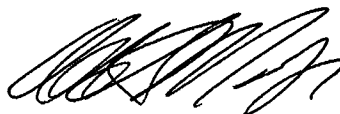
1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact by transporting passengers for hire between points in the Metropolitan District on June 11, 2007, while Certificate No. 506 was invalid/suspended.

2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

3. That upon timely compliance with the requirements of this order, and provided respondent is in compliance with Commission Regulation No. 58, the Commission shall issue an order reinstating Certificate No. 506, subject to a one-year period of probation. A willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for immediate suspension and/or revocation of Certificate No. 506 without further proceedings, regardless of the nature and severity of the violation.

4. That Certificate No. 506 shall be subject to revocation pursuant to Article XI, Section 10(c) of the Compact if respondent fails to timely comply with the requirements of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.  
Executive Director

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<sup>10</sup> See Order No. 9901 (same); Order No. 7621 (same).

<sup>11</sup> See e.g., Order No. 10,456; Order No. 9901; Order No. 9899; Order No. 7621.